

ACSI submits that BellSouth cannot meet its obligation to provide nondiscriminatory interconnection until its refusal to compensate CLECs for terminating local ISP traffic is remedied.

**F. BellSouth is Unable to Provide Collocation and Interconnection in Accordance with the Act**

Having installed and tested its local exchange switch in New Orleans, during August 1997, ACSI requested that BellSouth provide virtual collocation arrangements in a critical central office in the downtown business district. However, BellSouth later informed ACSI that it would be able to accommodate only ten percent of the requested capacity — a paltry 192 lines — until BellSouth is able to install an additional main distribution frame. Although BellSouth hopes to complete this process later this year, there are no assurances.

The result of BellSouth's delay is that ACSI currently is able to test one-tenth of the lines that it expected to have in place by October 19 for the purpose of commencing ULL cutovers. Thus, while BellSouth claims to have opened its Louisiana market to competition, it has in fact not even completed basic construction to accommodate even one CLEC in the key central office in the largest city in the state. The fact that BellSouth to date has been unable to fulfil ACSI's August 1997 request for collocation belies its claim that it provides interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).

**V. BELLSOUTH HAS REFUSED TO ADOPT PERFORMANCE MEASUREMENTS NECESSARY TO DETERMINE COMPLIANCE WITH THE ACT**

The ACSI/BellSouth Interconnection Agreement is replete with guarantees that BellSouth will provide local interconnection and UNEs at service levels that are at "parity" with services and facilities provided by BellSouth to itself or its end-users. While such general warranties are very important, they are extremely difficult to enforce in the absence of detailed statistical information comparing BellSouth's performance for itself as compared to the actual service levels provided to interconnectors. When ACSI negotiated its interconnection agreement with BellSouth in July 1996, BellSouth steadfastly refused to share such performance monitoring and measurement information with ACSI. Responding to outcries from the industry generally, BellSouth has more recently expressed a willingness to provide limited performance measurement data. However, BellSouth's proposal falls far short of that necessary to measure true "parity" in service levels.

Specifically, ACSI has asked BellSouth to correct multiple deficiencies in its performance reporting. First, ACSI asked BellSouth to report statistics on a city or end office basis rather than an averaged statewide basis. Since ACSI competes with BellSouth in specific urban areas, it is important to know how BellSouth serves customers in those areas as opposed to more rural areas where it does not face competitive pressure.

Second, ACSI asked BellSouth to report ULL installation data for business and residential customers separately. ACSI understands that BellSouth applies different

performance objectives for itself in these market segments,<sup>93</sup> and it is important that BellSouth's aggressive business service targets not be watered down by residential statistics.

Third, ACSI asked BellSouth to report the number of minutes it takes to perform customer cutovers. BellSouth's current practice of reporting "due dates" met provides no meaningful information as to whether customers were cutover in accordance with the 5-minute requirement of the ACSI/BellSouth Interconnection Agreement.

Fourth, ACSI requested that BellSouth provide reports that make it possible to compare BellSouth's success in installing ULLs to its experience in turning up new lines for its own end-users. Since the ULL is the key UNE provided by BellSouth to ACSI, establishing a statistical point of comparison is essential to ensure service "parity".

BellSouth refused — and continues to refuse — each of these requests. For a facilities-based CLEC such as ACSI, BellSouth's reluctance to provide meaningful comparative reporting concerning its performance in installing ULLs is cause for particular concern. As discussed earlier, ACSI has experienced great difficulty in having BellSouth install ULLs dependably. Indeed, BellSouth's own auditors confirm that the performance of its LCSCs has been miserable. Nevertheless, even under the proposal made by BellSouth to the Commission in its Application, BellSouth takes the position that it cannot report comparative data on its ULL performance because "no direct comparison to BellSouth services is possible."<sup>94</sup> This is hogwash. BellSouth turns up new lines for both new and

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<sup>93</sup> Notably, BellSouth already reports resale statistics separately for the business and residential market segments. See *Affidavit of William N. Stacy (Performance Measures)*, Exhibit WNS-2.

<sup>94</sup> See *BellSouth Brief*, at 73.

existing customers every day. The turn-up of such new lines is both the functional and market equivalent of the installation of ULLs for CLECs. From an end-user's perspective, certainly, such cutovers amount to the same thing — establishment of service. Thus, it is imperative that parity in performance be monitored. Indeed, there is virtually no other way to ensure that BellSouth is honoring its statutory obligation of nondiscrimination.

Finally, it is worth noting that no performance reporting has value if it is inaccurate. While BellSouth's affiant Stacy claims that initial measurements demonstrate parity in performance, that certainly is not consistent with ACSI's experience. Interestingly, the initial statistics provided by BellSouth to ACSI on the installation of ULLs for ACSI do not comport with ACSI's actual experience. Simply put, ACSI's data shows a failure rate much higher than that reported to it by BellSouth. The basic problem is that BellSouth reports an installation as successful if it ultimately is installed on the due date, *regardless* of whether the customer is delayed for hours, put out of service for hours, INP installation is mishandled, etc. For example, if a ULL is installed on the due date — but, as commonly is the case, BellSouth fails to coordinate installation of the associated INP — BellSouth credits the installation as being "on time". Thus, many of the examples of BellSouth's recurring provisioning failures recounted by ACSI in the preceding section — which violate the express terms of the ACSI/BellSouth Interconnection Agreement — would be counted as successful installs in BellSouth's proposed ULL performance measurement system. ULLs are by BellSouth's reckoning installed "on time" even if they do not function properly. This renders

the resulting statistics meaningless. ACSI believes that each of these problems must be ironed out *before* the Commission can approve BellSouth's Application.<sup>95</sup>

## **VI. BELLSOUTH'S PREMATURE ENTRY INTO THE LOUISIANA INTERLATA MARKET IS NOT IN THE PUBLIC INTEREST**

The prospect of interLATA entry via Section 271 is the *only* cognizable incentive that RBOCs have to cooperate and facilitate the development of local competition.<sup>96</sup> Because each CLEC customer gained is an RBOC customer lost, the Commission must be absolutely certain that BellSouth has completely and irreversibly opened its local exchange markets to competition before it removes that sole incentive by approving BellSouth's Section 271 Application.

Approval of BellSouth's current Application for entry into the Louisiana interLATA market is not in the public interest because BellSouth has not taken the necessary steps to open its local exchange markets in that state to competition. As has been demonstrated above:

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<sup>95</sup> The Georgia Public Service Commission, as a direct result of a complaint filed by ACSI against BellSouth, was the first state commission in BellSouth's service territory to conduct hearings on performance standards. Direct testimony in that proceeding was filed on Wednesday, October 22, 1997.

<sup>96</sup> To underscore this point, the Commission previously noted that:

Ameritech's Chief Officer, Richard Notebaert, has recognized the power of [the Section 271] incentive. In commenting on the difference between Ameritech and GTE, which is not subject to the section 271 requirements, Mr. Notebaert is quoted as stating: The big difference between us and them is they're already in long distance — What's their incentive to cooperate?"

*Ameritech Michigan Order*, at n.25 (citation omitted).

- BellSouth consistently has proven that is unable and unwilling to implement its interconnection agreements with potential competitors in Louisiana and throughout its service territory.
- BellSouth has demonstrated a remarkable inability to provision ULLs, INP and other checklist items. This is confirmed not only by ACSI's experiences across the region but also by BellSouth's own internal audit of its local competition service centers.
- Despite the Commission's original requirement that nondiscriminatory access to OSS be made available by the first of this year,<sup>97</sup> BellSouth still is unable to provide such access and, in fact, has no electronic method for ordering ULLs.
- BellSouth has failed to provide geographically deaveraged rates for interconnection and UNEs. In Louisiana, BellSouth's ULL pricing policies create a cost-price squeeze that makes the provisioning of facilities-based services to residential customers in Louisiana economically unfeasible.

The public interest standard also requires that BellSouth not engage in activities that impede the development of local competition in Louisiana. However, BellSouth has engaged and continues to engage in an alarming array of activities designed to shield itself from competition and hobble its potential competitors. For example, as has been described above, BellSouth has become quite adept at using the time delay caused by its own inability to provide nondiscriminatory OSS access and provision ULLs and INP to engage in anticompetitive practices. In a recent South Carolina example, ACSI could not provide a new customer with an order completion date because BellSouth (1) initially could not provide ACSI with a FOC, (2) then provided one that was more than two months after the original order, (3) then agreed to move the FOC date forward, (4) then missed the FOC date, and (5)

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<sup>97</sup> The FCC has determined that it would not take enforcement action against incumbent LECs "making good faith efforts to provide . . . access [to OSS functions]." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Second Order on Reconsideration*, ¶ 11 (rel. Dec. 13, 1996).

then forced ACSI to resubmit the order. Throughout this frustrating delay, a BellSouth representative repeatedly made contact with the customer and tried to derail the switch to ACSI by claiming that BellSouth could offer better options.

In other instances, BellSouth's anticompetitive tactics are unrelated to its dilatory provisioning tactics, but are no less egregious. For example, in September 1997, ACSI lost a local Mississippi government contract worth more than \$125,000 because of a BellSouth representative's false and disparaging comments about ACSI and defamatory comments about its employees. In South Carolina, also in September 1997, an ACSI customer was informed by BellSouth that its directory assistance listings were dropped because it no longer was a BellSouth customer. Although the listings were restored within a week, this and the previous example show, at the very least, that BellSouth is disturbingly permissive of anticompetitive behavior by its employees and agents.

BellSouth also uses a variety of methods to lock-in existing BellSouth local customers and prevent new entrants from freely competing for their business. BellSouth has been aggressively promoting the use of multi-year customer-specific Contract Service Arrangements ("CSAs") where it competes with ACSI for specific business customers. While there may not be anything inherently wrong with CSAs, ACSI believes that, given the extraordinary head start BellSouth enjoys in the switched services market, BellSouth should not be permitted to lock in customers to long-term contracts while local competition is in its infancy. ACSI suggests that the public interest requires that a "fresh look" policy be implemented as a condition of Section 271 approval to ensure that all Louisiana end-users

have an opportunity to choose local service providers, once BellSouth releases its stranglehold on essential bottleneck facilities.<sup>98</sup>

Among the more startling of BellSouth's anticompetitive initiatives is its ongoing campaign to effectively lock CLECs out of major office buildings, office parks, shopping centers and other similar properties. Specifically, BellSouth is enticing property management companies to enter *exclusive* marketing arrangements with BellSouth under which the property managers are paid handsomely for promoting BellSouth's services to tenants of the property, and for refusing to establish similar promotional agreements with CLECs. Under the terms of BellSouth's standard form Property Management Services Agreement, BellSouth obtains access — free-of-charge — to building entrance conduits, equipment room space and riser/horizontal conduits for placement of BellSouth equipment and other telecommunications facilities needed to serve building tenants. The property manager also commits to designate BellSouth as the local telecommunications "provider of choice" to building tenants and to promote BellSouth as such. In return for the property manager's efforts, BellSouth agrees to establish a "Credit Fund" which the property manager can use itself or distribute to tenants. The Credit Fund is usable to pay for selected BellSouth services (*i.e.*, seminars, nonrecurring installation charges, etc.).

This program has at least two anticompetitive effects, largely attributable to the fact that the arrangement is expressly an *exclusive* one. First, because BellSouth is given "free" (no cash payment) access to the building conduit and riser it gains an inherent cost advantage

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<sup>98</sup> Such a "fresh look" policy also should require the suspension of termination liability provisions.



in obtaining the use of these essential facilities. Second, since the property manager must agree to promote BellSouth services exclusively in order to be compensated, BellSouth has created an incentive for property managers to refuse to cooperate with ACSI and other CLECs in promoting and providing services to building tenants.

BellSouth's use of exclusive agreements designed to block its potential competitors also has been extended to sales agents. In states across the BellSouth territory, BellSouth has been requiring sales agents to sell BellSouth local services *exclusively*. Indeed, BellSouth's sales agency agreements routinely include provisions that prevent sales agents from selling CLEC services for a year *after* their BellSouth contract is terminated. Thus, if a sales agent wishes to market the services of a competitive provider, the agent first must terminate his or her BellSouth representation and then forego selling competitive services for at least one year to satisfy the non-compete provisions typically found in BellSouth's exclusive agency agreements. Clearly, this deprives ACSI and other competitors of access to an important sales channel.

BellSouth's anticompetitive program also extends to its activities in the carrier customer market. In February 1996, ACSI filed a Formal Complaint with the FCC with reference to the grossly excessive reconfiguration nonrecurring charges ("RNRCs") that BellSouth imposed on IXCs, attempting to make an access channel termination location ("ACTL") move to ACSI.<sup>99</sup> ACTL moves are required whenever an IXC agrees to switch all or part of its direct trunked access transport services on a given route from BellSouth's

network to the network of a competing provider, such as ACSI. Although incumbents typically require the payment of RNRCs to accomplish such ACTL moves, BellSouth's RNRC's are applied inconsistently and have effectively shut ACSI, and all other competitive providers, out of the customer facility market in BellSouth territory.<sup>100</sup>

In ACSI's experience, BellSouth has applied the RNRCs for ACTL moves in a manner which prevents IXC's from switching to ACSI transport services. As explained in ACSI's Formal Complaint, the charges imposed on IXC's are not reasonably related to the direct costs incurred by BellSouth in making the ACTL move. Indeed, they are inconsistent with the rates included in BellSouth's interstate access tariff. Even more troubling, the RNRCs imposed by BellSouth for IXC access network reconfigurations to connect to ACSI services routinely far exceed the reconfiguration charges imposed by BellSouth when an IXC orders reconfigurations from one BellSouth service to another.

BellSouth's excessive RNRCs effectively presents carrier customers with three equally unattractive choices: (1) forego reconfiguration; (2) reconfigure with BellSouth so as to avoid or minimize the RNRCs; or (3) switch to ACSI and pay the RNRC costs (or force ACSI to absorb such costs). Indeed, it is often the case that the only way for ACSI to make a reasonable bid to a potential access customer is to include an offer to pay for the significant and unreasonable reconfiguration costs imposed by BellSouth. Unfortunately, this is almost always economically infeasible.<sup>101</sup> As a result, ACSI's efforts to convince otherwise ready,

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<sup>100</sup> *ACSI Initial Brief*, FCC File No. E-96-20, at 2-3.

<sup>101</sup> For example, ACSI's inability to absorb BellSouth's excessive RNRCs caused one IXC that had agreed to move thirteen (13) DS3 circuits from BellSouth to ACSI to back out of a five-year contract expected to be worth \$500,000 in revenues.

willing and able access customers to switch from BellSouth transport services have been stymied.

In sum, unless BellSouth is made to correct its provisioning shortcomings and cease its anticompetitive activities, Louisiana consumers will never realize the benefits of local competition. Very few Louisianans currently have a choice in switched local service providers and of those Louisiana consumers with the choice that do elect to make the switch from BellSouth almost all are served via resale. Thus, with local exchange competition in Louisiana clearly in its nascent stages of development, the public interest requires that the incentive of Section 271 be held in place and that BellSouth's Application be denied.

## CONCLUSION

As the foregoing discussion demonstrates, BellSouth's Application makes no case for compliance with the requirements of the Act and the Commission's roadmap. It should be dismissed on that basis. In the event that BellSouth's Application is not dismissed, ACSI respectfully requests that it be denied on the basis that (1) BellSouth currently is ineligible for interLATA entry under Track A or Track B; (2) BellSouth is either unwilling or unable to comply with the 14-point competitive checklist; (3) BellSouth refuses to adopt performance measurements necessary to determine its compliance with the Act; and (4) BellSouth's premature entry into the interLATA market is not in the public interest.

Respectfully submitted,

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November 25, 1997  
54010.41

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Application by BellSouth Corporation, )  
BellSouth Telecommunications, Inc., and ) CC Docket No. 97-231  
BellSouth Long Distance, Inc., for )  
Provision of In-Region, InterLATA )  
Services In Louisiana )

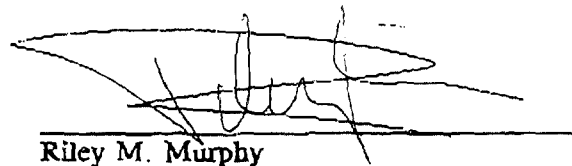
**DECLARATION AND VERIFICATION OF RILEY M. MURPHY**

1. I, Riley M. Murphy, am Executive Vice President and General Counsel of American Communications Services, Inc. ("ACSI"). I am authorized to make this declaration on behalf of ACSI.

2. I have reviewed the foregoing Opposition of ACSI to the Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, and the materials filed in support of thereof.

3. The information contained in the application has been provided by persons with knowledge thereof. All information supplied in the application is true and accurate to the best of my knowledge, information, and belief formed after reasonable inquiry.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 25, 1997.

  
Riley M. Murphy

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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Services In Louisiana	)	

ACSI APPENDIX

**ACSI  
APPENDIX**

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Tab	Description	
Exhibit	Document	Subject
1	<i>Initial Brief of ACSI, FCC File No. E-97-09 (public version)</i>	BellSouth's failures in providing UNEs, INP and interconnection to ACSI in Georgia
2	<i>Reply Brief of ACSI, FCC File No. E-97-09 (public version)</i>	BellSouth's failures in providing UNEs, INP and interconnection to ACSI in Georgia
3	<i>Complaint of American Communication Services of Columbus, Inc. Against BellSouth Telecommunications, Inc. Regarding Access to Unbundled Loops, Georgia PSC Docket No. 7818-U</i>	BellSouth's failures in providing ULLs in Georgia
4	<i>Analysis Conducted for BellSouth - LCSC ("Independent Audit")</i>	Results of an independent audit of BellSouth's Birmingham and Atlanta LCSCs
5	<i>Post-Audit Reports</i>	Reports on implementation of plan to address shortcomings of BellSouth's LCSCs





**DUPLICATE**

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In the Matter of )  
 )  
AMERICAN COMMUNICATIONS SERVICES, INC. )  
Complainant )  
 )  
v. )  
 )  
BELLSOUTH TELECOMMUNICATIONS, INC. )  
Defendant )

File No. E-97-09

FILED

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**INITIAL BRIEF OF  
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DATED: May 23, 1997  
(Public Version filed May 30, 1997)

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**CERTIFICATE OF SERVICE**

I certify that I have this day served a copy of the foregoing Rebuttal Testimony of Nancy Murrah and the Direct Testimony of William C. Stipe III in Docket No. 7212-U upon the following persons by causing copies of the same to be placed in an envelope with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

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## **SUMMARY**

One of the principle purposes of the Telecommunications Act of 1996 ("1996 Act") was to usher meaningful competition into the local exchange market. Recognizing that access to the local loop was an insurmountable barrier to the development of local exchange competition, Congress and the Commission required that incumbent local exchange carriers ("LECs") negotiate interconnection agreements with local service competitors and enable them to purchase local loops as unbundled network elements. The hope was that competitive local exchange carriers ("CLECs") would combine unbundled loops with their own local network facilities to offer a truly competitive, facilities-based local exchange alternative.

ACSI accepted this invitation. The company, which operates 21 competitive access networks throughout the Southern and Southwestern United States, negotiated an Interconnection Agreement with BellSouth and invested heavily to develop and deploy local switched services. The provisioning of unbundled local loops by BellSouth in a timely and seamless fashion was fundamental to the success of ACSI's business plan. As the new player in the market, it was essential that its services be regarded by customers as at least equal in quality to the services currently provided by BellSouth. Since ACSI likely would be blamed for failed installations, regardless of who was actually at fault, it was critical to ACSI that BellSouth be able to install local loops on time and without undue customer disruption.

To address these concerns, the Interconnection Agreement executed between ACSI and BellSouth on July 25, 1996, expressly provided that, wherever facilities were available, BellSouth would install loops by the Customer Due Date, that cutovers would ordinarily be accomplished with a service disruption of no more than 5 minutes, and that installation intervals would be at parity to those achieved when BellSouth provides service to its own end

users. Unfortunately, when ACSI submitted its first orders for unbundled loops in Columbus, Georgia during November 1996, BellSouth was completely unprepared to honor its commitments. Despite the fact that it had a lead time of 10 months after enactment of the 1996 Act, and 5 months after execution of the Interconnection Agreement, BellSouth proved to be totally incapable of processing and installing orders for unbundled loops and Service Provider Number Portability ("SPNP").

Installation was routinely delayed substantially. Customers were put out-of-service for hours. SPNP installation was not coordinated and, consequently, affected customers could not receive inbound calls. Even after service was installed, customers would inexplicably suffer after-the-fact disconnections. ACSI soon was forced to suspend its submission of loop orders to preserve its own business goodwill. But it lost revenue, lost customers, and suffered damage to its business reputation as a result of BellSouth's inability to perform.

This is not a situation involving isolated start-up problems. It is a wholesale systems failure attributable to BellSouth's unwillingness to dedicate adequate resources to meet its legal obligation to provide reasonable access to unbundled network elements.

ACSI was the unwitting victim of BellSouth's complacency. In short, BellSouth's eagerness to obtain an Interconnection Agreement which could be used to support a Section

271 application for long distance authority was far greater than its willingness to dedicate resources to meet its Section 251-252 interconnection obligations. This failure violates Sections 201, 251 and 252 of the Communications Act, as amended, the corresponding provisions of the Commission's rules and relevant provisions of the Interconnection Agreement. As a consequence, ACSI has suffered substantial damages which it respectfully asks the Commission to remedy herein.

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Defendant	)	

**INITIAL BRIEF OF  
AMERICAN COMMUNICATIONS SERVICES, INC.**

American Communications Services, Inc. ("ACSI"), by its undersigned counsel, respectfully submits its initial brief on the formal complaint brought by ACSI against BellSouth Telecommunications, Inc. ("BellSouth").

**INTRODUCTION**

ACSI is the first competitive local exchange carrier ("CLEC") to order unbundled local loops from BellSouth and one of the first in the country to begin providing a competitive facilities-based alternative to the exchange services of the incumbent local exchange carriers ("LECs"). The Telecommunications Act of 1996 ("the 1996 Act") gives new entrants such as ACSI the right to interconnect to the networks of incumbents such as BellSouth in order to purchase unbundled network elements, to exchange local traffic and to



achieve other purposes designed to promote the development of competition in local exchange services. Incumbent LECs must enter into local interconnection agreements with new entrants for these purposes. Equally important, however, BellSouth and other incumbent LECs must deliver on their obligations in actual practice, by fulfilling orders placed by CLECs promptly, accurately and reliably. If CLECs are denied the ability to provide service quality at least at parity to that delivered by incumbent LECs to their own end users, new entrants will be stigmatized in the market as providers of sub-standard local services. Consequently, they will not be able to attract or retain customers, and competition in local exchange services will be thwarted.

This complaint is before the Commission because BellSouth utterly and completely failed to install unbundled local exchange loops ("unbundled loops") when ACSI began submitting orders in November 1996. Rather than transitioning customers easily and seamlessly from BellSouth's local exchange services to ACSI's, as the Interconnection Agreement between the parties and the Commission's rules require, BellSouth severely disrupted service to ACSI's new customers, disconnected them for periods of 4 to 24 hours each, and frequently failed to coordinate the cutover so that these customers could receive calls dialed to their old telephone numbers. Moreover, because BellSouth disrupted ACSI's most critical orders -- those orders submitted while ACSI was trying to establish its initial foothold in Columbus, Georgia -- ACSI was forced to place all of its pending orders on hold and delay the submission of additional orders until BellSouth proved its capability to handle them competently and efficiently. The provisioning and service quality difficulties have not been resolved and numerous additional delays and interruptions attributable to BellSouth's ill-prepared loop order procedures continue to the present day.